

AMENDED IN SENATE APRIL 22, 2013

**SENATE BILL**

**No. 652**

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**Introduced by Senator DeSaulnier**

February 22, 2013

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An act to amend Sections 910, 916, and 944 of the Civil Code, relating to construction defect litigation.

LEGISLATIVE COUNSEL'S DIGEST

SB 652, as amended, DeSaulnier. Residential construction defect litigation: notice requirements.

Existing law prescribes a process for determining liability in an action seeking the recovery of damages arising out of, or related to, deficiencies in residential construction, design, and related issues and sets forth specified standards in this regard. Existing law requires a claimant alleging a violation of these standards to follow a specified, prelitigation procedure, which includes providing a builder who has allegedly violated those standards a notice describing the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation. Existing law limits the damages that a claimant may recover in an action in this regard. *Existing law also allows a builder to inspect the claimed unmet standards within 14 days after acknowledgment of the receipt of a claim and, if the builder intends to hold specified parties responsible for its contribution for an unmet standard, requires the builder to provide notice to the specified parties in order to attend an inspection.*

This bill would ~~revise~~ *require* the notice given to the builder to ~~require~~ *that the notice describe the claim in reasonable, specific detail, including observed evidence, that is sufficient for the builder to determine the nature and location of the claimed violation, the way in which the*

standard was not met, and the date and time that the claimed violation was observed or determined not to meet the standard, ~~so that a reasonable person would be able to determine the location and nature of the defect.~~ The bill would require a homeowner who makes a claim for damages to record the claim ~~in the chain of title for the property prior to any sale~~ in a *Notice of Settlement, as provided*, and to notify a subsequent potential purchaser of the claim and the status of the repairs. Failure to record and make this disclosure would be the basis for a cause of action by a subsequent purchaser of the property to require the seller to make the identified repairs or pay the subsequent purchaser the amount of damages necessary to make the repairs. The bill would also require the notice provided to the builder to contain an acknowledgment of these obligations. *This bill would additionally revise the timeline in which a builder may inspect a claimed unmet standard and the timeline and manner in which the builder may notify a specified third party of an inspection.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 910 of the Civil Code is amended to read:  
2     910. Prior to filing an action against any party alleged to have  
3     contributed to a violation of the standards set forth in Chapter 2  
4     (commencing with Section 896), the claimant shall initiate the  
5     following prelitigation procedures:  
6     (a) The claimant or his or her legal representative shall provide  
7     written notice via certified mail, overnight mail, or personal  
8     delivery to the builder, in the manner prescribed in this section, of  
9     the claimant's claim that the construction of his or her residence  
10    violates any of the standards set forth in Chapter 2 (commencing  
11    with Section 896). That notice shall provide the claimant's name,  
12    address, and preferred method of contact, and shall state that the  
13    claimant alleges a violation pursuant to this part against the builder,  
14    and shall describe the claim in reasonable, specific detail, *including*  
15    *the specific observed evidence of the violation and its location*  
16    *within the home or common area, that is sufficient for the builder*  
17    to determine the nature and location of the claimed violation, the  
18    way in which the standard was not met, and the date and time that  
19    the claimed violation was observed or determined not to meet the

1 standard, so that a reasonable person would be able to determine  
2 the location and nature of the defect. In the case of a group of  
3 homeowners or an association, the notice may identify the  
4 claimants solely by address or other description sufficient to apprise  
5 the builder of the locations of the subject residences. *The notice*  
6 *shall be signed by the claimant certifying that each claimed*  
7 *violation is known to the claimant to exist in the locations*  
8 *described.* That document shall have the same force and effect as  
9 a notice of commencement of a legal proceeding.

10 ~~(b) The notice shall contain an acknowledgment of a~~  
11 ~~homeowner's obligation to record in the chain of title for the~~  
12 ~~property an allegation of damages and to make a disclosure to a~~  
13 ~~subsequent potential purchaser as required by Section 944.~~

14 *(b) The notice shall be a written statement signed and verified*  
15 *by the claimant containing all of the following:*

16 *(1) An acknowledgment of the claimant's obligation to make a*  
17 *disclosure to a subsequent potential purchaser as required by*  
18 *Section 944.*

19 *(2) The name of the property owner or reputed owner.*

20 *(3) A statement of the claimant's allegation of damages.*

21 *(4) A legal description of the property.*

22 *(c) The notice requirements of this section do not preclude a*  
23 *homeowner from seeking redress through any applicable normal*  
24 *customer service procedure as set forth in any contractual,*  
25 *warranty, or other builder-generated document; and, if a*  
26 *homeowner seeks to do so, that request shall not satisfy the notice*  
27 *requirements of this section.*

28 *(d) It is the intent of the Legislature that a form may be*  
29 *developed and provided by the builder prior to the close of escrow*  
30 *that includes the elements of the notice required by this section.*  
31 *If the builder provides the form to the original purchaser, the*  
32 *claimant or his or her legal representative shall fill out the form,*  
33 *signed by the claimant, in order to initiate a claim pursuant to this*  
34 *title. The claimant shall acknowledge that the claimant has read*  
35 *and understood the section of the claim form regarding the*  
36 *requirement to disclose any lawsuits for construction defects to*  
37 *future purchasers pursuant to Section 1102.6 and the penalties*  
38 *for filing fraudulent claims.*

39 *SEC. 2. Section 916 of the Civil Code is amended to read:*

1     916. (a) If a builder elects to inspect the claimed unmet  
2 standards, the builder shall complete the initial inspection and  
3 testing ~~within~~ *no sooner than 10 business days but no later than*  
4 *14 business days* after acknowledgment of receipt of the notice of  
5 the claim, at a mutually convenient date and time. *Any delay in*  
6 *reaching agreement on the date and time of the inspection shall*  
7 *automatically extend the 14-day time limit contained in this section*  
8 *for a period of time equal to the delay.* If the homeowner has  
9 retained legal representation, the inspection shall be scheduled  
10 with the legal representative's office at a mutually convenient date  
11 and time, unless the legal representative is unavailable during the  
12 relevant time periods. All costs of builder inspection and testing,  
13 including any damage caused by the builder inspection, shall be  
14 borne by the builder. The builder shall also provide written proof  
15 that the builder has liability insurance to cover any damages or  
16 injuries occurring during inspection and testing. The builder shall  
17 restore the property to its pretesting condition within 48 hours of  
18 the testing. The builder shall, upon request, allow the inspections  
19 to be observed and electronically recorded, video recorded, or  
20 photographed by the claimant or his or her legal representative.

21     (b) Nothing that occurs during a builder's or claimant's  
22 inspection or testing may be used or introduced as evidence to  
23 support a spoliation defense by any potential party in any  
24 subsequent litigation.

25     (c) If a builder deems a second inspection or testing reasonably  
26 necessary, and specifies the reasons therefor in writing within three  
27 days following the initial inspection, the builder may conduct a  
28 second inspection or testing. A second inspection or testing shall  
29 be completed within 40 days of the initial inspection or testing.  
30 All requirements concerning the initial inspection or testing shall  
31 also apply to the second inspection or testing.

32     (d) If the builder fails to inspect or test the property within the  
33 time specified, the claimant is released from the requirements of  
34 this section and may proceed with the filing of an action. However,  
35 the standards set forth in the other chapters of this title shall  
36 continue to apply to the action.

37     (e) If a builder intends to hold a subcontractor, design  
38 professional, individual product manufacturer, or material supplier,  
39 including an insurance carrier, warranty company, or service  
40 company, responsible for its contribution to the unmet standard,

1 the builder shall provide notice ~~to so~~ that person or entity  
2 ~~sufficiently in advance to allow them to attend~~ receives notice of  
3 the initial, or if requested, second inspection, *including date, time,*  
4 *and location, and a copy of the claim, at least five business days*  
5 *in advance*, of any alleged unmet standard and ~~to may~~ participate  
6 in the repair process. *The subcontractor, design professional,*  
7 *individual product manufacturer, or material supplier, including*  
8 *an insurance carrier, warranty company, or service company,*  
9 *shall provide an updated email and physical address at which this*  
10 *notice may be provided. The builder shall rely on the most recent*  
11 *email or physical address the subcontractor, design professional,*  
12 *individual product manufacturer, or material supplier, including*  
13 *an insurance carrier, warranty company, or service company, has*  
14 *provided.* The claimant and his or her legal representative, if any,  
15 shall be advised in a reasonable time prior to the inspection as to  
16 the identity of all persons or entities invited to attend. This  
17 subdivision does not apply to the builder's insurance company.  
18 Except with respect to any claims involving a repair actually  
19 conducted under this chapter, nothing in this subdivision shall be  
20 construed to relieve a subcontractor, design professional, individual  
21 product manufacturer, or material supplier of any liability under  
22 an action brought by a claimant.

23 ~~SEC. 2.~~

24 SEC. 3. Section 944 of the Civil Code is amended to read:

25 944. (a) If a claim for damages is made under this title, the  
26 homeowner is only entitled to damages for the reasonable value  
27 of repairing any violation of the standards set forth in this title, the  
28 reasonable cost of repairing any damages caused by the repair  
29 efforts, the reasonable cost of repairing and rectifying any damages  
30 resulting from the failure of the home to meet the standards, the  
31 reasonable cost of removing and replacing any improper repair by  
32 the builder, reasonable relocation and storage expenses, lost  
33 business income if the home was used as a principal place of a  
34 business licensed to be operated from the home, reasonable  
35 investigative costs for each established violation, and all other  
36 costs or fees recoverable by contract or statute.

37 ~~(b) (1) A homeowner who makes a claim for damages shall~~  
38 ~~record the claim in the chain of title for the property prior to any~~  
39 ~~sale and shall notify a subsequent potential purchaser of the~~

1 ~~property of the amount of the claim and whether or not the claimed~~  
2 ~~violation was repaired.~~

3 *(b) (1) Upon settlement of a claim, or upon completion of*  
4 *repairs by the builder in response to a claim, the claimant shall*  
5 *immediately record a Notice of Settlement in the Office of the*  
6 *County Recorder where the property is located. The Notice of*  
7 *Settlement shall include the original Notice of Claim and shall be*  
8 *signed by the claimant. In addition, the Notice of Settlement shall*  
9 *state either that the repairs were made to the satisfaction of the*  
10 *homeowner or that payment was made by the builder in lieu of*  
11 *repairs.*

12 *(2) A claimant shall notify a subsequent potential purchaser of*  
13 *the property of the amount and nature of the claim and whether*  
14 *or not the claimed violation was repaired consistent with*  
15 *subdivision (a) of Section 1102.1, which provides that it is the*  
16 *existing obligation of the parties to a real estate contract, or their*  
17 *agents, to disclose any fact materially affecting the value and*  
18 *desirability of the property, including, but not limited to, the*  
19 *physical conditions of the property.*

20 ~~(2)~~

21 *(3) Failure to satisfy the requirements of paragraph (1) shall be*  
22 *the basis for a cause of action by a subsequent purchaser of the*  
23 *property to require the seller of the property claimant to make the*  
24 *repairs identified in the claim or pay a subsequent purchaser the*  
25 *amount of damages necessary to make the repairs.*